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8 AMERICAN HOMES 4 RENT, L.P.

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

12 JAEMON LEE, an Individual,
13 Plaintiff,

14 v.

15 AMERICAN HOMES 4 RENT, L.P, a
foreign limited partnership; BOYD
16 GAMING CORPORATION, a domestic
corporation; DOES I-X; ROE
17 CORPORATIONS I-X,
18 Defendants.
19

Case No. 2:21-cv-01870-JAD-DJA

**DEFENDANT AMERICAN HOMES 4
RENT, L.P.'S MOTION TO STAY THE
EARLY NEUTRAL EVALUATION**

20 Defendant AMERICAN HOMES 4 RENT, L.P. ("Defendant" or "AH4R"), by and through
21 its counsel of record, hereby moves for a stay of the Early Neutral Evaluation Session ("ENE")
22 pending the Court's order on Defendant's Motion to Compel Arbitration and to Dismiss. **ECF**
23 **Nos. 6, 7.** Defendant contends that this Court lacks jurisdiction over this matter due to the parties'
24 binding arbitration agreement and seeks dismissal of Plaintiff's claims against AH4R with
25 prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1). In light of such, Defendant does
26 not intend to extend any monetary offer to resolve Plaintiff's claims at the ENE. Therefore, good
27 cause exists to stay the ENE in order to conserve judicial resources and avoid any argument that
28 Defendant submitted itself to the Court's jurisdiction while its Motion to Compel Arbitration is

1 pending. This Motion is made and based upon the accompanying Memorandum of Points and
 2 Authorities, the supporting declaration of counsel, and all pleadings and papers on file herein.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 On February 26, 2020, Plaintiff signed a valid and enforceable agreement to arbitrate all
 6 claims that might arise out of his employment with AH4R. **ECF No. 6, Exhibit 5.** Instead of
 7 demanding arbitration, Plaintiff Jaemon Lee (“Plaintiff”) filed his Complaint in this Court on
 8 October 11, 2021, alleging claims against AH4R for: (1) sex and gender discrimination in violation
 9 of Title VII and NRS 613.330 et. seq.; (2) retaliatory discharge in violation of Title VII and NRS
 10 613.340; (3) intentional/negligent infliction of emotional distress. **ECF No. 1.** In response, AH4R
 11 filed a Motion to Compel and Dismiss or, Alternatively, to Stay Litigation Pending Arbitration.
 12 **ECF Nos. 6, 7.** AH4R’s Motion is currently pending before the Court. After AH4R’s Motion was
 13 filed, the Court issued an Order Scheduling Early Neutral Evaluation Session (hereinafter “the ENE
 14 Order”) to take place on January 26, 2022 before Judge Weksler. **ECF No. 8.** Accordingly,
 15 Defendant seeks a stay of the ENE pending the Court’s order on Defendant’s Motion to Compel
 16 Arbitration and to Dismiss.

17 **II. LEGAL ARGUMENT**

18 **a. Applicable Legal Standard**

19 Once a court is considering whether to grant a motion to compel arbitration and dismiss a
 20 complaint, “a federal court may consider only issues relating to the making and performance of the
 21 agreement to arbitrate.” *Miceli v. Citigroup, Inc.*, 2016 WL 1170994, 2 (D. Nev. Mar. 22, 2016)
 22 (citing *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999); *see also Sparking v. Hoffman*
 23 *Construction Co.*, 864 F.2d 635, 638 (9th Cir. 1988)). “To require the parties to proceed with the
 24 action pending a ruling on the motion to compel arbitration and any appeal thereof would cause the
 25 party seeking to enforce the arbitration clause to be ‘deprived of the inexpensive and expeditious
 26 means by which the parties had agreed to resolve their disputes.’” *Id.* at *2.

27 Local Rule 16-6(c) provides that parties may file a motion for exemption from the Early
 28 Neutral Evaluation Program within seven days from entry of an order scheduling the ENE session.

1 *See also ECF No. 8 at p. 1* (“Pursuant to the Local Rules, a motion for exemption from the ENE
 2 program must be filed no later than 7 days after entry of this order.”). The rule also makes clear
 3 that the “evaluating magistrate judge has final authority to grant or deny any motion requesting
 4 exemption from the program” and that such orders are not appealable. Local Rule 16-6(c).

5 **b. The Case Should Be Exempted from ENE Program Pending Decision on**
 6 **Defendant’s Motion to Compel Arbitration and Dismiss**

7 AH4R filed its Motion to Dismiss and Compel Arbitration based on the fact that Plaintiff
 8 agreed to arbitrate any dispute he may have with AH4R arising out of his employment. The Court
 9 should issue stay the ENE pending the resolution of the Motion to Dismiss and Compel Arbitration
 10 in order to avoid any argument that Defendant submitted itself to the jurisdiction of this Court when
 11 Defendant contends that this Court lacks jurisdiction over Plaintiff’s claims against AH4R.
 12 Additionally, while Defendant would participate in the ENE in good faith if compelled to do so,
 13 Defendant does not intend to extend any monetary offer to Plaintiff to resolve his claims at this
 14 time. Thus, good cause exists to stay the ENE currently scheduled for January 26, 2022 until after
 15 the Court issues a decision regarding the arbitrability of Plaintiff’s claims. Accordingly, Defendant
 16 respectfully requests that this Court grant its Motion to Stay Early Neutral Evaluation Session.

17 In an effort to avoid judicial intervention, counsel for AH4R contacted Plaintiff’s counsel
 18 and Boyd Gaming Corporation’s counsel to request a stay of the ENE pending AH4R’s Motion.
 19 (*See Declaration of Diana G. Dickinson, Esq. in Support of Motion to Stay the ENE attached hereto*
 20 *as Exhibit A*). Despite Boyd Gaming Corporation’s willingness to enter a stipulation to stay the
 21 ENE, Plaintiff’s counsel refused.¹ Since the benefit of staying the ENE clearly outweighs the
 22 minimal burden, if any, of delaying it, AH4R seeks a stay of the ENE in this action until the Court
 23 adjudicates the Motion to Compel and Dismiss.

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 26
 27 ¹ Given the jurisdictional issues in AH4R’s Motion to Compel, Plaintiff’s counsel did agree to
 28 stipulate to a stay of discovery as to AH4R pending the Court’s order on Defendant’s Motion to
 Compel Arbitration and to Dismiss. AH4R has sent Plaintiff’s counsel a draft stipulation and will
 file once it receives approval from Plaintiff’s counsel.

1 **III. CONCLUSION**

2 Based upon the foregoing, AH4R respectfully requests that the Court grant Defendant's
3 Motion to Stay the Early Neutral Evaluation until such time as the Court can rule upon the pending
4 Motion to Compel Arbitration and Dismiss.

5 Dated: November 10, 2021

LITTLER MENDELSON, P.C.

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8 RICK D. ROSKELLEY, ESQ.
9 DIANA G. DICKINSON, ESQ.

10 *Attorneys for Defendant*
11 AMERICAN HOMES 4 RENT, L.P.

12 **Order**

13 The Court reviewed the parties' briefs at ECF Nos. 13
14 and 18. Good cause appearing, IT IS ORDERED that
15 ECF No. 13 is GRANTED. IT IS FURTHER ORDERED
16 that the Early Neutral Evaluation (ENE) is VACATED. IT
17 IS FURTHER ORDERED that the parties are to file a
18 stipulation to reschedule the ENE, if the motion to
19 compel arbitration and to dismiss is denied.

20 **IT IS SO ORDERED**

21 **DATED:** 10:58 am, November 29, 2021

22 

23 **BRENDA WEKSLER**
24 **UNITED STATES MAGISTRATE JUDGE**

PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169. On November 10, 2021, I served the within document(s):

MOTION TO STAY DISCOVERY AND FOR EXEMPTION FROM THE EARLY NEUTRAL EVALUATION PROGRAM

- ☒ By **CM/ECF Filing** – Pursuant to FRCP 5(b)(3) and LR 5-1, the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system:

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Boyd Gaming Corporation

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 10, 2021, at Las Vegas, Nevada.

/s/ Yvonne Feher

Yvonne Feher